In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1192

SHEILA M. LYONS,
PETITIONER,

v.

SALVE REGINA COLLEGE and
SHEILA M. MEGLEY, PH.D., INDIVIDUALLY
AND IN HER CAPACITY AS DEAN OF STUDENTS
AT SALVE REGINA COLLEGE,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

PETER J. MCGINN
NORMAND G. BENOIT
TILLINGHAST, COLLINS & GRAHAM
2000 Hospital Trust Tower
Providence, Rhode Island 02903
(401) 274-3800
Attorneys for the Respondents

Blanchard Press, Inc., Boston, Mass. — Law Printers

TABLE OF CONTENTS

Table of Citations

Cases

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1192

SHEILA M. LYONS,
PETITIONER,

v.

SALVE REGINA COLLEGE and SHEILA M. MEGLEY, PH.D., INDIVIDUALLY AND IN HER CAPACITY AS DEAN OF STUDENTS AT SALVE REGINA COLLEGE,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

Citation to Opinions Below

The opinion of the United States Court of Appeals for the First Circuit is reported at 565 F.2d 200 (1st Cir. 1977). The opinion of the District Court of Rhode Island is reported at 422 F.Supp. 1354 (D.R.I. 1976).

Jurisdiction

Respondent does not question the jurisdiction as set forth in the Petition.

Constitutional Provisions, Statutes and Rules Involved

Jurisdiction in the federal courts was alleged by petitioner pursuant to 28 U.S.C. §1332 (1970), which provides in relevant part as follows:

> "(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—
>
> (1) citizens of different States;"

28 U.S.C. §1332(a)(1).

The Questions Presented

This case presents the following questions:

1. Was the First Circuit Court of Appeals correct in refusing to employ isolated and selected statements by respondent Dean of Students to hold that Respondent College's formal written Grade Appeal Procedure in which the Grade Appeals Committee makes a "recommendation" to the Dean of Students was intended by the parties to bind absolutely the Dean of Students no matter how unreasonable the result and despite the fact the result was in contradiction to established College procedures?

2. Was the First Circuit Court of Appeals correct in concluding that the courts should not apply a rigorous commercial contract law standard of review in cases where it is alleged that a university or college breached a contract with a student based upon the contents of a student manual and where the alleged breach of contract involves good faith actions of school officials taken with respect to grading and internal review and appeals of grades?

Statement

On September 17, 1976, petitioner Sheila M. Lyons, a former student of respondent Salve Regina College and a graduate of the College with a major in psychology, filed an amended complaint with the District Court for Rhode Island. Her original complaint filed the same day sought to bring a 42 U.S.C. §1983 (1970) Civil Rights Action against respondent private College, but the amended complaint was brought solely on the basis of alleged diversity of citizenship and on a breach of contract theory. Petitioner principally sought to have the District Court order an "F" grade which she had received in Nursing 402A changed to an "Incomplete." Pursuant to Nursing Department rules at respondent College, as a result of receiving an "F" in Nursing 402A, petitioner could no longer continue her studies toward a degree in Nursing. Petitioner was allowed to switch her major and graduate with a psychology degree. Petitioner never sought reinstatement in the Nursing Department, an avenue potentially open to her, but simply filed suit over three months after her graduation for alleged breach of contract.

In her suit, petitioner asked the District Court to order reinstatement in the College for the purpose of obtaining a Nursing degree and sought money damages for breach of contract. The basis for her claim for relief was that respondent Sister Sheila Megley, the Dean of Students at the College, had breached a contract with petitioner by violating the applicable College procedures when the Dean did not follow the "recommendations" from two of three members of the College Grade Appeals Committee who had "recommended" that the grade be changed to an "Incomplete." The third member of the Committee had recommended affirmation of the grade of "F".

Following trial of the case, the District Court ordered a change of the grade of the petitioner from "F" to "Incomplete" and ordered reinstatement of the petitioner in the College with an opportunity to earn a major in Nursing. *See Lyons* v. *Salve Regina College*, 422 F.Supp. 1354 (D.R.I. 1976). The basis of the court's opinion was that although the College Manual and Academic Information Booklet provided that the Grade Appeals Committee recommend a course of action to the Dean of the College, the District Court found that based on the circumstances any such recommendation was "binding" upon the Dean. The District Court reached this unusual result by picking out selected conduct of Dean Sheila Megley to conclude essentially that recommend does not mean recommend.

Respondents appealed the District Court order and the Court of Appeals for the First Circuit unanimously reversed the District Court's decision. The Court of Appeals canvassed the entire lengthy record in this case and reasoned that

> "[t]here is nothing in the instant record to indicate that a student at Salve Regina College had any rational basis for believing that the word 'recommendation' meant anything other than its normal, everyday meaning." *Lyons* v. *Salve Regina College*, 565 F.2d 200, 202-03 (1st Cir. 1977).

The Court of Appeals simply held that the word "recommend" means "recommend", and there was no need to consider isolated and selected statements of the Dean of Students to attempt to impart some special meaning to the term. More importantly, the Court of Appeals recognized and applied the rule that the courts will not apply rigid commercial contract law doctrine when *academic* administrative appellate procedures are involved. Petitioner

pressed for a determination of damages in the District Court while the case was on appeal to the First Circuit but the District Court subsequently passed consideration of this question after the Court of Appeals' reversal.

Argument

I. Petitioner Has Not Demonstrated Why This Court Should Exercise Its Discretionary and Extraordinary Power To Issue a Writ of Certiorari.

Rule 19 of the Rules of this Court deals with considerations governing review on certiorari and provides in part as follows:

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling, nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> . . . .
>
> (b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

Petitioner has not demonstrated in her petition why this Court should exercise its extraordinary and discretionary jurisdiction and issue a writ of certiorari in this case. This is a breach of contract case in the federal courts on the basis of diversity of citizenship jurisdiction. No federal questions are involved. Nevertheless, petitioner fails to indicate that an important state question has been decided in conflict with applicable state law, and petitioner does not demonstrate that the Court of Appeals has rendered a decision in conflict with the decisions of other courts of appeals on the same questions. No reason articulated within Rule 19 of this Court's rules has been demonstrated by the petitioner in support of her request that a writ of certiorari be issued in this case.

In addition to the foregoing, petitioner herself recognizes in her brief that what she is requesting is a third-level review of the complex fact pattern which was developed below. On Page 7 of the petitioner's brief, she states: "[P]etitioner seeks only review of the narrow issue of whether or not, based on the factual issues presented, petitioner was entitled to relief as granted by the District Court." On Page 5 of her brief petitioner recites that "[t]his case involves questions of fact. . . ." This Court has observed and recognized by its actions on numerous occasions that "[w]e do not grant a certiorari to review evidence and discuss specific facts." *United States* v. *Johnston*, 268 U.S. 220, 227 (1925). A reading of the question presented by the petitioner and her argument in support of reasons for granting the writ of certiorari clearly indicates that the contract interpretation in this case turns entirely on the particular facts and circumstances surrounding the contract and its performance. Thus, the question presented by the petitioner is of particular interest only to the parties before it and does not present a case in which this Court should exercise its extraordinary prerogative to issue a writ of certiorari.

II. The Court of Appeals Clearly Did Not Err in Holding That the Term "Recommendation" Related to an Advisory Process and the Contract in the Form of the Student Manual Was Therefore Not Breached.

As the First Circuit Court of Appeals' decision indicates, the operative portion of the student manual which is the crux of the breach of contract controversy in this case was entitled "Grade Appeal Process" and provided that:

> "After both cases [the student's and the teacher's] are presented to the three-member grade appeals committee, the recommendation of the committee is made to the Dean of Students/Associate Dean of the College."
>
> *Lyons* v. *Salve Regina College*, 565 F.2d 200, 201 (1st Cir. 1977).

The three members of the Grade Appeals Committee made three different recommendations. Two members recommended that the student be allowed a grade of "Incomplete" and one member recommended that the "F" grade not be altered. The Court of Appeals, applying fundamental contract principles, saw no ambiguity in the term "recommendation" and held that the Dean of the College was not bound by the recommendations of the three members of the Committee.

This determination and the reasoning of the Court of Appeals was in accordance with the pronouncements of numerous other courts. This case involves judicial scrutiny of the actions taken by officials of a private college in the context of *academic* evaluation. Courts have been uniform in concluding that unless school authorities are motivated by malice or bad faith or act arbitrarily or capriciously, their acts in such situations are not subject to judicial review. *See, e.g., Connelly* v. *University of Vermont and*

State Agr. Col., 244 F. Supp. 156 (D. Vt. 1965). This rule of judicial non-interference with college or university officials in matters of academic decisions is based upon sound policy reasons. Courts are not equipped to review decisions based upon academic standards as these questions are particularly within the province, experience and expertise of academicians and administrators. *See Gaspar* v. *Bruton*, 513 F.2d 843, 851 (10th Cir. 1975). *See also Mahavongsanan* v. *Hall*, 529 F.2d 448 (5th Cir. 1976).

In contrast to the numerous cases holding that the decisions of school authorities in the academic context will only be reviewed for malice or bad faith or arbitrary or capricious action, the District Court in this case employed a technical, commercial contract law construction to the student manual and the conduct of the parties. Recognizing this error, the First Circuit Court of Appeals cited the Tenth Circuit case of *Slaughter* v. *Brigham Young University*, 514 F.2d 622 (10th Cir. 1975), where that court opined as follows:

> "The trial court's rigid application of commercial contract doctrine advanced by plaintiff was in error. . . . It is apparent that *some* elements of the law of contracts are used and should be used in the analysis of the relationship between plaintiff and the university to provide some framework into which to put the problem. . . . This does not mean that 'contract law' must be rigidly applied in all its aspects, nor is it so applied even when the contract analogy is extensively adopted. . . . The student-university relationship is unique, and it should not be and cannot be stuffed into one doctrinal category. . . ."
>
> *Lyons* v. *Salve Regina College*, 565 F.2d 200, 202 (1st Cir. 1977), quoting, *Slaughter* v. *Brigham Young University*, 514 F.2d 622, 626 (10th Cir. 1975).

The correctness of the First Circuit's holding that the District Court erred in rigidly applying commercial contract law principles to construe the provisions of the student manual dealing with academic determinations is readily apparent in light of this Court's recent opinion in *Board of Curators of the University of Missouri* v. *Horowitz*, 46 U.S.L.W. 4179 (No. 76-695 March 1, 1978). The majority opinion there stressed the danger of "judicial intrusion into academic decisionmaking" [*id.* at 4183], and further observed that

> "[l]ike the decision of an individual professor as to the proper grade for a student in his course, the determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision making."

Id. at 4182.

Thus, the First Circuit properly perceived the implications inherent in the District Court's rigid application of contract law principles to cases involving academic, as opposed to disciplinary, decision-making in the college or university context. If the District Court approach which petitioner urges were adopted, the courts would enter the academic thicket under the banner of "breach of contract." The very result and reasoning which the Court eschewed in *Board of Curators of the University of Missouri* v. *Horowitz, supra*, under the rubric of the due process clause would be imposed in "breach of contract" suits brought by students to contest academic determinations. Clearly, the First Circuit did not err in finding no breach of contract based upon the facts of this case and the legal standard of review applicable in breach of contract suits involving academic determinations.

Conclusion

For the reasons stated above, respondents pray that the petition for writ of certiorari be denied.

Respectfully submitted,

PETER J. MCGINN
NORMAND G. BENOIT
TILLINGHAST, COLLINS & GRAHAM
2000 Hospital Trust Tower
Providence, Rhode Island 02903
(401) 274-3800
Attorneys for the Respondents